

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Bridging the Digital Divide for Low-Income ) WC Docket No. 17-287
Consumers )
)
Lifeline and Link Up Reform and Modernization ) WC Docket No. 11-42
)

ORDER

Adopted: May 30, 2023

Released: May 30, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a limited, one-time waiver to a limited number of Lifeline subscribers who received incorrect information about the deadline for recertifying their eligibility for the Lifeline program. Specifically, in letters from the Universal Service Administrative Company (USAC), these subscribers were informed that they had approximately 80 days in which to recertify their eligibility for the Lifeline program, rather than the 60-days provided for under the Lifeline program rules. To prevent the impacted Lifeline subscribers from experiencing the hardship of de-enrollment as a result of their reliance on the incorrect deadline set forth in the USAC letters, we waive, to the extent necessary, the 60-day recertification deadline and allow the impacted Lifeline subscribers to recertify by the deadline provided in their respective USAC recertification letters.

II. BACKGROUND

2. The Lifeline program rules require each Lifeline subscriber to recertify his or her continued eligibility for the Lifeline program annually.1 In most instances, USAC is responsible for conducting Lifeline subscriber recertifications.2 In those instances, where USAC cannot verify the subscriber’s continued eligibility through an eligibility database, USAC is required by the Commission’s rules to notify the subscriber in writing that the subscriber must recertify his or her continued eligibility for the Lifeline program within 60 days and to inform the subscriber that the failure to timely recertify will result in the subscriber’s de-enrollment from the Lifeline program.3 If the subscriber fails to recertify as required by the 60-day deadline set forth in section 54.405(e)(4) of the Commission’s rules, USAC de-enrolls the subscriber as required under the rules.4

1 See 47 CFR § 54.410(f). The eligibility criteria for the Lifeline program are outlined in 47 CFR § 54.409.

2 Lifeline subscriber recertifications are conducted by USAC using the National Verifier. See USAC, Recertification, https://www.usac.org/lifeline/national-verifier/recertification/(last visited May 30, 2023). All Lifeline service providers must still complete FCC Form 555 each year to report the annual results of the recertification process, including data accuracy certifications; see USAC, Annual Filings (FCC Form 555), https://www.usac.org/lifeline/rules-and-requirements/forms/annual-filings/#555 (last visited May 30, 2023).

3 See 47 CFR § 54.405(e)(4).

4 See id.

3. USAC mailed the letters at issue from May 4, 2023 through May 8, 2023 to a limited number of Lifeline subscribers. In early May 2023, USAC learned that, due to a system error, these letters incorrectly provided what resulted in an approximately 80-day recertification deadline, rather than the 60-day recertification deadline required under the Lifeline program rules.<sup>5</sup> Some of the Lifeline subscribers who received the USAC letters at issue *have* already recertified.<sup>6</sup> Other Lifeline subscribers who received the USAC letters at issue may rely, however, on the incorrect recertification deadline in USAC's letters, which is beyond the 60-day recertification deadline in the rules.

### III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>7</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>8</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>9</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>10</sup>

5. We find that good cause exists to grant the impacted Lifeline subscribers a limited one-time waiver of the 60-day recertification deadline set forth in section 54.405(e)(4) of the Commission's rules and to allow these subscribers, if necessary, to recertify by the deadline indicated in the USAC recertification letters. This waiver relief is in the public interest and is consistent with the Bureau's prior waiver of the 60-day recertification deadline under similar circumstances where there was a USAC system error that generated letters providing incorrect deadlines.<sup>11</sup>

6. We find first that it is reasonable for the impacted Lifeline subscribers to rely on the approximately 80-day deadline provided in the inaccurate recertification letters sent by USAC. We do not expect Lifeline subscribers to be sufficiently familiar with the Commission's recertification and de-enrollment rules to know the applicable response deadlines or to be able to identify deadlines that are inconsistent with those set out in the Commission's rules. In addition, we do not believe de-enrollment would be appropriate for subscribers who waited until more than 60 days from USAC's letter to recertify eligibility. The public interest would not be served if these Lifeline subscribers were de-enrolled because of their reliance on an incorrect USAC-provided deadline that resulted from a USAC system error that was beyond these subscribers' control.

7. The limited, one-time waiver relief we provide in this Order applies to those Lifeline subscribers who received a USAC recertification letter with an incorrect 80-day deadline, whose 60-day recertification deadline under the rules has passed, but who have already recertified by or still have time to recertify before the incorrect 80-day USAC deadline. This limited waiver also applies to the Lifeline

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<sup>5</sup> After learning of this issue, USAC corrected the system error to ensure that, going forward, USAC recertification letters provide the correct 60-day recertification deadline.

<sup>6</sup> Based on USAC data, approximately 22,000 subscribers were sent a letter with the wrong recertification deadline; and as of May 15, 2023, approximately 1,200 of these impacted subscribers had already timely recertified by the deadline under the rules.

<sup>7</sup> 47 CFR § 1.3.

<sup>8</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>9</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>10</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>11</sup> See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 17-287, Order, 34 FCC Rcd 9888, 9890-9891, paras. 10-11 (WCB 2019) (granting one-time waiver to a limited number of Lifeline subscribers who received incorrect information about the deadline for recertifying their eligibility for the Lifeline program).

subscribers who received a USAC recertification letter with an incorrect 80-day deadline but whose 60-day deadline and the 80-day deadline in the USAC letter have not yet passed. We conclude it is appropriate to provide this latter group with waiver relief even though the 60-day deadline in the Commission's rules has not passed because doing so would provide the same relief to all of the impacted subscribers. In addition, sending these subscribers revised notices with a corrected deadline would likely cause consumer confusion. Further, for some subscribers in this latter group, a revised notice would not arrive in time to give the subscriber a reasonable amount of time within which to recertify by the 60-day deadline.<sup>12</sup>

8. Consistent with the limited waiver we grant in this Order, we direct USAC to keep open in its systems the impacted Lifeline subscribers' respective recertification windows until the deadline set forth in the USAC recertification letters to those subscribers. If an impacted Lifeline subscriber fails to recertify by the deadline indicated in his or her recertification letter from USAC, that subscriber then must be de-enrolled consistent with section 54.405(e)(4) of the Lifeline rules.

9. In the specific circumstances present here, we do not believe that this temporary waiver creates a risk of waste, fraud, or abuse because the facts justifying the waiver stem from a USAC system error and were not the result of fraudulent or incorrect information provided by the eligible telecommunications carriers receiving disbursements for these subscribers. Additionally, the subscribers impacted by this waiver must still ultimately complete their recertifications or be de-enrolled from the Lifeline program.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1-4 of and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.405(e)(4) of the Lifeline program rules is waived to the limited extent provided herein.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>12</sup> USAC projects that it will take approximately one week to prepare and send corrected notices, and the 60-day deadline for some of these subscribers is in early June.